

J6DAAKIDC

Conference

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

-----x

3 UNITED STATES OF AMERICA,

4 v.

18 CR 872 (VM)

5 LLOYD KIDD,

6 Defendant.

7 -----x

8 New York, N.Y.

9 June 13, 2019

10:30 a.m.

10 Before:

11 HON. VICTOR MARRERO,

12 District Judge

13 APPEARANCES

14 GEOFFREY S. BERMAN

15 United States Attorney for the

16 Southern District of New York

17 MOLLIE BRACEWELL

18 JACOB GUTWILLIG

ELINOR TARLOW

Assistant United States Attorney

19 LAW OFFICE OF ZACHARY MARGULIS-OHNUMA

Attorney for Defendant Kidd

20 ZACHARY MARGULIS-OHNUMA

21 VICTORIA MEDLEY

J6DAAKIDC

Conference

1 (Case called)

2 THE COURT: Good morning.

3 This is a proceeding in the matter of United States  
4 versus Kidd. It is docket number 18 CR 0872.

5 Counsel, please enter your appearances.

6 MS. BRACEWELL: Good morning, your Honor.

7 Molly Bracewell, joined by my colleagues, Eleanor  
8 Tarlow and Jacob Gutwillig, for the government.

9 MR. MARGULIS-OHNUMA: Zachary Margulis-Ohnuma, joined  
10 by my associate Victoria Medley and our summer intern. The  
11 defendant, Lloyd Kidd, is seated between us.

12 Good morning, your Honor.

13 THE COURT: I acknowledge the receipt of a letter  
14 dated June 11, 2019, from the government stating the request  
15 and schedule that the parties proposed for submission of  
16 motions in limine and requests to charge and voir dire. That  
17 schedule is set forth in the June 11 letter. The opening  
18 motions are due on June 17, opposition by June 24 and reply in  
19 by June 27 and the request to charge and voir dire by June 26.

20 Ms. Bracewell, does that schedule constitute the  
21 government's understanding?

22 MS. BRACEWELL: Yes, your Honor.

23 THE COURT: All right. Also, the defendant submitted  
24 on June 7 a suppression motion regarding a superseding  
25 indictment request to suppress certain records of a company

J6DAAKIDC

Conference

1 called Pengart Inc.

2 Ms. Bracewell, what is the government's contemplation  
3 with regards to or response to that motion?

4 MS. BRACEWELL: Your Honor, we would like the  
5 opportunity to supplement our response just with a brief  
6 opposition motion which we could do by I suppose Tuesday or  
7 Wednesday of next week if that would be acceptable.

8 THE COURT: All right.

9 MR. MARGULIS-OHNUMA: Judge, if we could have 48 hours  
10 to reply after that?

11 THE COURT: All right. So let's fix a firm date. The  
12 government's response by Wednesday of next week and the  
13 defendant's reply by Friday.

14 MR. MARGULIS-OHNUMA: Thank you.

15 THE COURT: Now, there are some outstanding matters  
16 that the parties have had submissions to the Court, in  
17 particular, the motion of the defendant dated May 17 to  
18 suppress certain evidence and statements and also to dismiss  
19 the original statement for failure to set forth essential facts  
20 constituting the offense.

21 The defendant's second motion asks for a bill of  
22 particulars to specify certain facts constituting the offense.

23 Third, the suppression of the defendant's post-arrest  
24 statements.

25 And next, the suppression of certain evidence seized

J6DAAKIDC

Conference

1 from the defendant's apartment on the day of his arrest. The  
2 government contends that that evidence was in plain sight and  
3 under the applicable exception should not be suppressed.

4 The defendant argues the fact that the evidence was  
5 not in plain sight and therefore is not subject to the  
6 exception.

7 The Court found that at least as to this one issue  
8 there was a factual dispute that needed to be resolved at a  
9 public hearing.

10 There's also a motion of the defendant to suppress the  
11 evidence that was obtained pursuant to the March 7 warrant to  
12 search certain electronic devices and also to suppress evidence  
13 obtained from a December 4, 2018 warrant for location and  
14 registered data number ending in 7216.

15 Let me just go through each of these motions and  
16 indicate where the Court will come out and issue a formal  
17 ruling with respect to the defendant's request or motion to  
18 dismiss the original indictment. The Court is not persuaded  
19 that there is a warrant for that, granting that motion.

20 As the Court of Appeals have said, has explained  
21 repeatedly, the dismissal of an indictment is an extraordinary  
22 remedy. Moreover, the Court of Appeals has repeatedly  
23 explained also that under the indictment that I need to do  
24 little more than track the language of the statute charged, the  
25 time and place again in approximate terms of the alleged

J6DAAKIDC

Conference

1 crimes.

2 Here, none of the details that the defendant seeks  
3 would justify dismissal of the indictment. It's an example  
4 when it is referenced to on or about any indictment language in  
5 violation occurring or certainty -- is also routinely upheld by  
6 sentencing circuit is sufficient.

7 Next, the notes to the Federal Rules of Criminal  
8 Procedure specifically permit the government to allege that  
9 "the defendant committed the offense by one or more specified  
10 means". Similarly, a lack of any identity, age and information  
11 of the alleged defendants do not support dismissal. As the  
12 Court of Appeal has stated in the Stringer decision the  
13 identity of a victim is not required in the indictment unless  
14 it is such importance that it must be spelled out in the  
15 indictment. In that case the identity of the victim was not  
16 required in a case involving identity theft crimes.

17 However, Stringer also suggested that for -- of crimes  
18 is of course an essential element question with the charge and  
19 the defendant is of course is entitled on demand to its  
20 disclosure to the bill of particulars or otherwise.

21 To that end, the Court is still considering whether it  
22 is necessary to direct the government to issue a bill of  
23 particulars here. It is the Court's understanding that the  
24 government provided some information in its discovery regarding  
25 the ages of Victim One and Victim Two and some additional

J6DAAKIDC

Conference

1 details about someone with whom they allegedly met.

2 Now, with that degree of information and detail,  
3 Mr. Margulis, what more does the defendant need in order to  
4 present to have a adequate notice and be able to prep an  
5 adequate defense. Why is the material that the government has  
6 presented not sufficient and why does it matter that the  
7 government has not indicated the exact ages of each of the  
8 victims but has indicated that the ages were around 14 or 16 or  
9 under 14 or 16? Why is that not sufficient?

10 MR. MARGULIS-OHNUMA: First of all, I'm not aware that  
11 the government has ever affirmatively told us the victims' ages  
12 either as of the time of the alleged crimes or as of now, and  
13 maybe they would could proffer right now.

14 THE COURT: The government's submission in response to  
15 your motion specifically indicated there are some motion of the  
16 ages to the victims.

17 MR. MARGULIS-OHNUMA: There's four counts now, two  
18 minor victims where there is really an issue. And I apologize  
19 for missing that if I did. I just don't recall them ever  
20 telling us what the victims' ages were except that they were  
21 minors.

22 THE COURT: Ms. Bracewell.

23 MS. BRACEWELL: Yes, your Honor. We believe if it's  
24 set forth in both our response to this motion and I would just  
25 note that on page eight of our brief we identified that Victim

J6DAAKIDC

Conference

1 One was approximately 14 years old and Victim Six was  
2 approximately 16 years old. There's some confusion our warrant  
3 application and our indictment diverge in numbering because we  
4 have only charged specific victims. But so it's clear from the  
5 indictment, the victim identified as Victim One was 16 years  
6 old at the time that she was trafficked by this defendant and  
7 in Count Two the Victim Two was approximately 14 years old at  
8 the time that she was trafficked by the defendant.

9 MR. MARGULIS-OHNUMA: What I need to know, your Honor,  
10 is whether I can rely on that or whether I find out later, oh,  
11 sorry. We mixed up the victim numbering again. Because we've  
12 been told many, many numbers with many, many victims. They  
13 were asking us to arrive at bail minutes that the magistrate  
14 judge found from internally contradictory.

15 So I'm requesting a bill of particulars, a simple  
16 letter Victim One was "X" and Victim Two was "Y". I am  
17 entitled to that because I'm playing whack a ball and trying to  
18 prove things about timing that are changing and influx. So I  
19 would just ask the government if we are in agreement that I  
20 need that and surely I do, that the government be directed to  
21 put that in a very simple bill of particulars so that we can  
22 rely on it, it becomes part of the indictment and I know what  
23 I'm defending at trial.

24 THE COURT: Mr. Margulis, the government has both in  
25 writing and in the response to your motion here on the record

J6DAAKIDC

Conference

1 with the reporter taking it down on the transcript indicating  
2 what the ages of the victims were. What more do you need and  
3 is that not enough at this point putting form over substance?

4 MR. MARGULIS-OHNUMA: It's not. A bill of particulars  
5 is an ancient vehicle to constrain the indictment so that we  
6 assure that the indictment protects against double jeopardy and  
7 adequately informs us. It has a talismanic power that changing  
8 representations that start at a bail hearing and go in motion  
9 papers that are unclear sworn, at least electronically signed,  
10 don't have. So I'm asking for a bill of particulars so at  
11 least as to the ages of the victims at the time. I don't see  
12 the prejudice to the government in simply asserting in a bill  
13 of particulars that this was their ages. Then I know we're  
14 talking about the same victims. It serves a very useful  
15 purpose. In this case where the government has made multiple  
16 conflicting representations I think it's warranted.

17 THE COURT: Ms. Bracewell.

18 MS. BRACEWELL: I think these aren't conflicting  
19 representations. There are more victims that we're aware of  
20 and have used in referenced in warrant applications that were  
21 charged in the indictment. So I think where we're trying to be  
22 very clear with the respect to the two victims what we've set  
23 forth in the our motion papers is correct. These are  
24 approximate dates. They're based on witness testimony,  
25 testimony that would be further coming to light during the



J6DAAKIDC

Conference

1 trial. So we just simply don't think it's necessary in this  
2 case.

3 We're happy to discuss providing redacted birth  
4 certificates, if there's questions about the voracity of the  
5 victims, representations about their ages, we have no problem  
6 other than protecting the anonymity of the witnesses but we're  
7 happy to discuss with defense counsel redacted forms of  
8 identification documents so they can assure themselves that  
9 they are aware of the identity of the victim but it's not  
10 necessary to be contained in any bill of particulars.

11 MR. MARGULIS-OHNUMA: Your Honor, if there are birth  
12 certificates and documentary information of the ages that the  
13 government plans to offer to the jury at trial, those should  
14 have been handed over months and months ago. I can't believe  
15 that there birth certificates available that wouldn't have been  
16 handed over. We need to defend this case and investigate. The  
17 government repeatedly said they were aware of their discovery  
18 obligations. How do they plan to offer a birth certificate at  
19 trial and not have shown it to me two and a half weeks before  
20 trial?

21 MS. BRACEWELL: We have not obtained them but we will  
22 obtain them. We will happily make steps to obtain them. But  
23 we are also prepared and will obtain birth certificates through  
24 our subpoena power in anticipation of trial. It's not  
25 something that we have in our possession that we haven't

J6DAAKIDC

Conference

1 produced but it's something that we can obtain.

2 THE COURT: Ms. Bracewell, I've made reference to form  
3 over substance before as to Mr. Margulis. Let me flip the coin  
4 around. What is wrong with the government submitting a letter  
5 to the Court in response to this request and in response to the  
6 discussion with having today confirm that the ages of two minor  
7 victims are approximately 14 and approximately 16.

8 MS. BRACEWELL: I think the opposition is that it's  
9 simply not necessary as it is required for a bill of  
10 particulars.

11 THE COURT: I'm not talking about whether there's a  
12 bill of particulars or not, just a confirmation that those are  
13 the ages of the victims that Mr. Margulis is going to be  
14 defending concerning the charges against the defendant.

15 MS. BRACEWELL: I mean, we have and are happy to make  
16 confirmations in writing in terms of formalizing it in a bill  
17 of particulars. We think it's not necessary or required. But  
18 we have already formalized in our motion response responses the  
19 actual ages of the victims against whom the defendant is  
20 charged with trafficking. So it's not reluctance. To be  
21 specific, we're happy to provide the approximate ages have both  
22 here on the record today and in our motion papers.

23 THE COURT: So in that case there is no reason why you  
24 cannot repeat yourself and confirm that that is the  
25 government's response to the defendant's request. Whether you

J6DAAKIDC

Conference

1 call it a bill of particulars or not doesn't matter. The  
2 important thing is what are those ages? And government has  
3 already stated what they are. Mr. Margulis is asking for maybe  
4 belt and suspenders or lace around the package.

5 MR. MARGULIS-OHNUMA: Judge, may I read into the  
6 record that what Ms. Bracewell is referring to as the  
7 government stating what the age is? What they said was, the  
8 government further identified during bail arguments held in  
9 this matter that Victim One was approximately 14-years-old and  
10 that Victim Six was approximately 16-years-old at the time that  
11 they were trafficked by the defendant.

12 So what they're saying is a said it at the bail  
13 hearing. And at the bail hearing -- and I have the minutes in  
14 front of me -- but they contradicted themselves several times.  
15 There was a rush. People were confused about which victims  
16 were which. They alleged there were four minor victims and  
17 it's not enough to say we said it at the bail hearing. They  
18 wasn't don't want to pin themselves down to particular victims.  
19 They could swap out victims on me between today and trial.  
20 There is nothing to pin them down. That's why this case calls  
21 out for a bill of particulars.

22 I would submit that a letter whether it says at the  
23 top, Dear Judge Marrero or whether it says bill of particulars,  
24 so they can't change their mind later and says, no, she was 15  
25 or 16 or 17.

J6DAAKIDC

Conference

1 THE COURT: Mr. Margulis, I think we're now belaboring  
2 the point and beating a dead horse. I think we are clear. The  
3 answer you're question about what is to pin them down is very  
4 simple. This Court pins them down. If they bring in a victim  
5 at the trial who says he or she is 30-years-old, that is not  
6 approximately 14.

7 The statute says "minor" and that's a legal term. And  
8 if the government says approximately 14 and approximately 16  
9 that's a minor. All right?

10 So again, Ms. Bracewell, if you would just address a  
11 letter to the Court indicating in accordance with this hearing  
12 that the government confirms the ages of the victims, what they  
13 are and what you have represented on the record and that should  
14 suffice.

15 MS. BRACEWELL: We will do that today. Thank you.

16 MR. MARGULIS-OHNUMA: May I be heard on the other  
17 elements?

18 THE COURT: Yes.

19 MR. MARGULIS-OHNUMA: The government has turned over  
20 in discovery to us four thousand photographs of women that it  
21 alleges were posted on Backpage and by the defendant. I think  
22 there is some overlap. So it's saying that since 2012 sometime  
23 after 2012 to present there were approximately four thousand or  
24 something, maybe a few less than four thousand woman that he  
25 was involved in advertising their sexual, commercial sexual

J6DAAKIDC

Conference

1 services on Backpage.

2 They're saying of those, four have come forward and  
3 are in the indictment as victims. It's impossible for me to  
4 prepare for trial and provide an adequate defense for Mr. Kidd  
5 without knowing who those people are. We have some guesses.  
6 There's 19 defendants in this case and related cases and  
7 there's some overlap and we are doing some dividing. We have a  
8 private investigator to try to figure it out but we just  
9 guessing. We're happy to protect the anonymity. But we're  
10 less than four weeks before trial. The witnesses are going to,  
11 I assume that the witnesses are going to testify at trial and  
12 become known. It's time for them to identify these witnesses  
13 so that we can adequately investigate and answer these charges.

14 The defenses are going to be as to the adult victims  
15 that no force or coercion was used. And as to the alleged  
16 minors victims, that they weren't minors at the time that they  
17 came into contact with Mr. Kidd. We are going to have to have  
18 to find documentary evidence which we're working up to prove  
19 that, which we'll provide to the government once we are clear  
20 as to what they're alleging to prove that. But it's now three  
21 and a half weeks before trial. We need the government to come  
22 up and tell us the names, the dates of birth, the names of the  
23 lawyers of the victims.

24 And so that's as to point one and two of the bill of  
25 particulars.

J6DAAKIDC

Conference

1           The other points are a little bit about when they came  
2 into contact with Mr. Kidd and when they stopped being in  
3 contact with Mr. Kidd. They're implied broadly in the  
4 indictment but the indictment covers a period from 2012 to the  
5 present.

6           So, is that right Ms. Bracewell? The indictment  
7 covers a broad time period.

8           So if what they're really saying is they met in  
9 February, then just tell us so I don't have to for worry about  
10 accounting for his movements from years earlier which is what's  
11 implied by the government current stance. So that's why we  
12 want to know when they met.

13           Same argument with when they were last in contact.  
14 Obviously, with the two added victims that were added on the  
15 superseder that was at the time of arrest. But for the other  
16 two victims if they were not in contact with him after spring  
17 of 2017 I don't want to spend resources investigating what was  
18 going on in 2018. There is no prejudice to them from simply  
19 telling us that.

20           Finally, they're alleging that there were commercial  
21 sex acts. They're going to prove up specific commercial sex  
22 acts. Don't they have to tell us when and where those acts  
23 took place and what the nature of them was so I can disprove  
24 them?

25           Same with the force threats and forced fraud and

J6DAAKIDC

Conference

1 coercion, and then can I start defending the case. But as it  
2 is now they haven't told me anything about the case. We're  
3 three weeks before trial. This is information, basic  
4 information that's needed to make sure that the trial proceeds  
5 in an orderly fashion.

6 THE COURT: Thank you.

7 Ms. Bracewell.

8 MS. BRACEWELL: On the Backpage advertising being  
9 referenced here, we received them and produced them at the end  
10 of May as quickly as we received them from the FBI. There are  
11 we believe four thousand images. Those are associated with a  
12 lesser number of advertisements. Any particular advertisement  
13 could have between one and ten images. We produced that  
14 universe of data because those were advertisements that we  
15 believe belonged to the defendant.

16 So we provided all of that information because we  
17 believe it's relevant. But candidly, we have not identified  
18 all of the victims who are depicted in the images. We're  
19 reviewing them. We're conferring with our victims and the  
20 other witnesses we expect to call to see if they identify  
21 themselves. Many of the images consistent with what we  
22 understand to be sort of typical practice on this site blur out  
23 of faces or they show body parts rather than full images. And  
24 so we've attempted to explain to the defense counsel we're not  
25 trying to hide the ball and we expect to make evidence

J6DAAKIDC

Conference

1 available and our exhibit list available when have it but we're  
2 process reviewing and grappling with that information  
3 ourselves.

4 So you know I would like to be helpful but we believe  
5 the defendant is entitled to that full universe of data, but we  
6 can't go through the four thousand images and say who's who or  
7 who's not because we simply at this point are still evaluating  
8 it ourselves. And we certainly don't think it sort of falls  
9 within the realm of a bill of particulars to have the discovery  
10 annotated or explicated in the way that this defendant seems to  
11 be asking.

12 Then with respect to the types of force, the  
13 particular commercial sex acts, we think that veers towards the  
14 manner in which we intend to prove the crime at trial.  
15 This is the substance of the witness testimony that we plan to  
16 draw out. So again, it just goes beyond what's required in a  
17 bill of particulars. So we just we simply can't sort of spell  
18 it out with next date and wrapped with bow because it's really  
19 not the nature of the allegations or the manner in which the  
20 testimony will come out. It'll be over a period of time the  
21 particular victims were residing with the defendant in a  
22 residence that he controlled. Clients came to meet them at  
23 that residence. There was a variety of sort of coercive  
24 methods employed, a variety of force and types of threats of  
25 force. So all of that we expect to come out in the 3500



J6DAAKIDC

Conference

1 material when that's eventually produced but we just don't  
2 think it's an appropriate sort of set of data that would be  
3 addressed in the bill of particulars.

4 THE COURT: Ms. Bracewell, Mr. Margulis has made  
5 reference to types of information that he claims he needs. You  
6 indicate some, if I'm reading you correctly, you are not  
7 disputing that some of that information is essential for  
8 preparation of the defense but the question seems to be one of  
9 timing. The government no less and the defense should be in a  
10 position to have this kind of fluid evidentiary record. At  
11 some point you need to be prepared for trial or not be  
12 prepared.

13 So the question to me is at what point can you  
14 reasonably say --

15 MS. BRACEWELL: To be very clear, we are abiding by  
16 our discovery obligations. The defense requested a very quick  
17 trial date which we were happy to accommodate but made very  
18 clear at the time that we were still waiting on the 23  
19 electronic devices and the Backpage returns. So we certainly  
20 don't think it's appropriate to sort of cabin our proof because  
21 a very rapid trial date was set. We're providing the  
22 information as quickly as possible. The Backpage ad, they've  
23 now had for several weeks. They're certainly able to review  
24 them with the defendant and make probably more out of it than  
25 we can but all of that is evidence of the defendant's

J6DAAKIDC

Conference

1 involvement in sex trafficking. So we think that that has been  
2 provided with more than enough time for them to make use of it  
3 in preparing a defense.

4 And with respect to the electronic devices, we  
5 continuing to access them and we're turning them over as  
6 quickly as we receive them. But I think the answer to that is  
7 if the defendant needs more time to evaluate and assess the  
8 information on that, the appropriate mechanism is an  
9 adjournment rear rather than to curtail the government's proof.  
10 This is a vast amount of data and we're doing our best to turn  
11 it over immediately. But I don't think a sort of race to the  
12 trial, it results in a windfall for the defendant in terms of  
13 the proof that the government is able to offer.

14 THE COURT: Thank you.

15 Mr. Margulis.

16 MR. MARGULIS-OHNUMA: I am not complaining that we  
17 haven't gotten -- the government's still investigating. They  
18 haven't found anything. I'm not complaining that we haven't  
19 gotten anything. I am complaining I don't know what the  
20 charges are. I don't know what the allegations are. And I  
21 think if I read what you were saying correctly, if the  
22 suggestion is early disclosure of the 3500 to cure the bill of  
23 particulars problem, I think that's exactly right. I think if  
24 we had witness statements that identified what was going on  
25 here we'd be able to defend against it. That might be an

J6DAAKIDC

Conference

1 appropriate remedy. The electronic devices, if they find  
2 something incriminating I'm sure they'll turn it over. The  
3 issue is what are the allegations that he is supposed to have  
4 done that they had probable cause for when they indicted him?

5 THE COURT: Ms. Bracewell, what is the earliest that  
6 the government might be prepared to turnover the 3500 material?

7 MS. BRACEWELL: Your Honor, we had suggested and I  
8 believe that what we would propose at this time is July 1, one  
9 week before trial, that's more than we typically provide. This  
10 is not an extensive list of witnesses that we expect to have  
11 testify. And the accounts already been set forth in warrant  
12 applications. Much of the detail that the defendant says he  
13 needs is already available in the warrant applications.

14 So I think that one week more than allows for the  
15 preparation of the defense and it accounts for the victims'  
16 sensitivities here. We're talking about trafficking victims,  
17 some of whom are still minors. There is the allegation that  
18 there was forced, threats of force, coercive methods employed.

19 It's simply necessary in this case to protect the  
20 victim's anonymity as long as possible and to make sure that  
21 the defense has time but that that's accounting for particular  
22 sensitivities here.

23 THE COURT: All right. Thank you.

24 MR. MARGULIS-OHNUMA: Sorry, judge. So we just  
25 changed the victim age again. Some of them are still minors.

J6DAAKIDC

Conference

1 I thought the one that was 2014 was 14 in 2015 and one was 16  
2 in 2017 is also now 19. So there is no issue of them now being  
3 minor. Maybe we could just clarify that again.

4 MS. BRACEWELL: I just want to interject because if  
5 the defense counsel would just take a look at the indictment.  
6 As we said, Victim One who is in Count One which we're talking  
7 about the spring of 2015 was approximately 16 years old.  
8 Victim Two we're talking about the summer of 2017, was  
9 approximately 14 years old. Victim Two is still a minor. She  
10 was accompanied by three minors when she went to the  
11 defendant's residence in Brooklyn. And so those individuals,  
12 some of whom accompanied her and were present for the conduct  
13 that we've charged are still minors.

14 So I just want to be very clear on the record as we've  
15 made representations today about the identities of Victim One  
16 and Two. I think the confusion is Victim One was in 2015  
17 approximately 16. Victim Two in 2017 was approximately 14 so  
18 that's very clear.

19 THE COURT: All right. Thank you.

20 Two observations. One is I am not persuaded that any  
21 further details are needed by way of a bill of particulars in  
22 this case assuming the government produces the 3500 material  
23 one week before the trial which is earlier than the government  
24 typically produces the 3500 material would be sufficient.

25 MR. MARGULIS-OHNUMA: Judge, may I interject? I'm

J6DAAKIDC

Conference

1       sorry to interrupt.

2               THE COURT:   Let me finish.

3               MR. MARGULIS-OHNUMA:   Sorry.

4               THE COURT:   The applicable case law does not require  
5       the indictment to provide the level, of as the government has  
6       indicated, annotated details the defense finances is  
7       requesting.   Defense says that it does not know what it is  
8       defending.   I think it's absolutely disingenuous to say that at  
9       this point.   The indictment is charging sex trafficking of  
10      minors and I don't see that that is unclear and does not give  
11      sufficient notice of what the defendant's being charged with.

12              Mr. Margulis.

13              MR. MARGULIS-OHNUMA:   In terms of the 3500, so turning  
14      it over July 1 in my view is you unacceptably late and won't  
15      allow us to investigate.   July 4 is a holiday.   It's a very  
16      slow week in general.   I have family commitments on the evening  
17      of July 3 and the morning of July 4.   I would suggest that  
18      turning it over at the time the motions in limine are due might  
19      not be a problem but July 1st is just too late.   We are not  
20      going to be able to get investigators out and contact the  
21      alleged victims' lawyers and things like that during the July  
22      4th week in a way that ensures an orderly trial and I'm not  
23      screaming and yelling at that point about Brady and other  
24      issues once we see that material.

25              THE COURT:   To some extent, Mr. Margulis, the

J6DAAKIDC

Conference

1 difficulty here comes back to your request that this matter be  
2 tried earlier and your entitled under the law to a speedy  
3 trial. But bear in mind that sometimes when you rush to have a  
4 trial as speedily as the defense may wish risk, you run into  
5 exactly the difficulties that both parties are encountering  
6 here which is the some time is required when the evidence is no  
7 voluminous for one second to review. So the Court granted your  
8 request for an early trial and now you are seeing what some of  
9 limitations of that request may be.

10 MR. MARGULIS-OHNUMA: Judge, having a later trial  
11 would just kick the can down the road. It's July 4th week but  
12 other than that if we had a September trial they still wouldn't  
13 tell us what he did until a week before the trial and they'd  
14 have more time to try to prove it up with their 22 devices that  
15 they seem to have found. I'm not asking for a later trial date  
16 I'm asking for a fair innocence of charges against him  
17 sufficiently in advance of trial to meet the charges and  
18 investigate them. They have a Brady and a Giglio obligation to  
19 do that which I think they're struggling with. I think the  
20 wiser course for everybody involved would be not to turnover  
21 the 3500 the Monday of July 4th week when we have the trial  
22 starting the Monday before. I won't belabor it more.

23 THE COURT: OK. Thank you.

24 Ms. Bracewell, to the extent there may be witnesses in  
25 the 3500 material who do not pose the kinds of difficulties as

J6DAAKIDC

Conference

1 the government understandably is concerned about the identity,  
2 possible to be threats, if there are such witnesses whose  
3 testimony could be made available sooner than the timeframe the  
4 government now indicates, I think it may be in the interests of  
5 good faith and comity for the government to break those out and  
6 rule the concerns that Mr. Margulis suggested here to some  
7 extent.

8 MS. BRACEWELL: Just to put on the record, we've  
9 believe we've complied with our Brady obligations. We've  
10 turned over all the evidence. They're not aware of any Brady  
11 materials but if we encounter any at any point we'll make  
12 immediate disclosures.

13 THE COURT: All right. Thank you.

14 Next, the defendant challenged or requested the  
15 suppression of the defendant's post-arrest statements. The  
16 government has indicated that it does not intend to raise those  
17 statements.

18 Ms. Bracewell, is that correct?

19 MS. BRACEWELL: That's correct.

20 THE COURT: So that makes that motion moot.

21 Next is the question of the evidence seized from the  
22 apartment which the government says is in plain view and the  
23 defense challenges that as a factual matter. So that raises a  
24 question of when to schedule the evidentiary hearing in order  
25 to address that issue. The Court had previously indicated that

J6DAAKIDC

Conference

1 the hearing might be, could be today but it's not feasible at  
2 this point. So we propose July 1st or 2nd.

3 Ms. Bracewell, what is the government's preference?

4 MS. BRACEWELL: We would be avail on either of those  
5 days and the agents are available to testify on both of those  
6 days as well.

7 MR. MARGULIS-OHNUMA: Judge, in light of the  
8 government's giving us the 3500 on those days, I really would  
9 like to have a hearing before that. I would request either  
10 next week or the week after if the Court is available for the  
11 hearing.

12 THE COURT: Ms. Bracewell, what's the government's  
13 view of an earlier date?

14 MS. BRACEWELL: We'd be happy to make the witnesses  
15 available. One of the witnesses is not available the 27th or  
16 28th. But within the next two weeks, they're otherwise largely  
17 available.

18 THE COURT: How long do you think the presentation  
19 would require?

20 MS. BRACEWELL: We believe we could, it would take a  
21 morning, perhaps, a couple hours of testimony. We intend to  
22 call three witnesses neither of whom we expect to go very long,  
23 maybe each half an hour and then depending on the length of the  
24 cross --

25 MR. MARGULIS-OHNUMA: Can I raise something?



J6DAAKIDC

Conference

1 THE COURT: Yes.

2 MR. MARGULIS-OHNUMA: I think we would be seeking to  
3 compel testimony by the two victim witnesses in the new  
4 indictment. So those were the individuals that were present in  
5 the apartment at the time that Mr. Kidd was arrested. So we  
6 would request either the government to accept subpoenas or  
7 identify their attorneys. I think we'll take our chances as  
8 far as scheduling goes. I just wanted to add that. So that  
9 would take probably another hour to the hearing.

10 MS. BRACEWELL: I think in response we would just like  
11 to clarify the scope. Those victims were not involved in the  
12 seizure of the devices. That was law enforcement activity.  
13 And our understanding of what the Court intends to hear  
14 evidence regarding is the location of the devices at the time  
15 that the law enforcement witnesses seized it.

16 So I just would seek clarification on the scope  
17 because I think making the victims testify as to law  
18 enforcement seizure would be wholly outside the scope of  
19 hearing as we understand it.

20 MR. MARGULIS-OHNUMA: Sure. So the victims were, this  
21 was six in the morning. The two other people were there with  
22 Mr. Kidd in the apartment when he was woken up and taken out by  
23 law enforcement. So they were present and had an opportunity  
24 as eyewitnesses to see where these devices were at the time  
25 that they were seized. Law enforcement claims they were just

J6DAAKIDC

Conference

1 lying out in the open and took pictures showing that. But we  
2 don't know if they moved things around or not. Those witnesses  
3 were present so they would know. And I suspect some of these  
4 were, 23 phones taken and three people living there. I suspect  
5 some of those devices may have actually belonged to those  
6 witnesses and they may be able to say, sure, you know I had it  
7 on my bedside. It was here. It was there. And that's the  
8 state of play when law enforcement goes in and claims that  
9 things were in plain view. So they have material testimony.  
10 I'm not going to go beyond that. I am going to ask what did  
11 you see about where these devices were?

12 THE COURT: All right.

13 MS. BRACEWELL: My understanding is that the defendant  
14 challenged five devices as having not been in plain view. Four  
15 of them he alleged were not found in the apartment but were  
16 instead found in the safes. One device was found in a closet  
17 and the allegation was that that particular computer in the  
18 closet could not have been in plain view. Understanding that  
19 they may have been witnesses to the arrest, that they might  
20 have been witnesses to the protective sweep, I simply don't  
21 understand that any of particular devices that are challenged  
22 are at all susceptible to these particular witnesses  
23 testifying. And they don't, we also just would like to note  
24 the extreme sensitivity of calling victims to give testimony in  
25 front of the defendant mere weeks before trial, I think that

J6DAAKIDC

Conference

1 the defendant's request seems to us to be extremely concerning.

2 THE COURT: Is there any dispute as to where that safe  
3 was located?

4 MS. BRACEWELL: So we expect the witness testimony  
5 from the agents to establish that the two safes were found in  
6 the defendant's bedroom and closet in the particular location.  
7 We also expect that the agents will testify that the manner in  
8 which they conducted a protective sweep, that is they entered,  
9 dispersed and went through the various rooms individually. The  
10 victims were not in the defendant's bedroom. They weren't in  
11 the defendant's bedroom when they entered the residence, nor  
12 did they subsequently enter into the defendant's bedroom. So  
13 the two safes were in the defendant's bedroom seen during the  
14 protective sweep and the computer, the fifth and final  
15 challenged device was also in the closet in the defendant's  
16 bedroom.

17 THE COURT: Well, Ms. Bracewell raises an interesting  
18 set of questions. At this point we don't know who those  
19 individuals were. All that we know from what you are saying is  
20 that they happened to have been in the apartment at the time of  
21 arrest. And we don't know what relationship they may have had  
22 with the defendant, whether they resided in that apartment,  
23 whether they regularly were there in the apartment and  
24 conceivably may have some knowledge of the defendant's keeping  
25 a safe or safes in the apartment. If it's someone who

J6DAAKIDC

Conference

1 regularly dealt with the defendant, not inconceivable that that  
2 person may have some awareness of where the defendant kept the  
3 safe. Those are all possibilities that would be very relevant  
4 to an issue that's before the Court.

5 MS. BRACEWELL: So understanding that they might have  
6 testimony about the location of the safes I think what's  
7 relevant to the law enforcement seizure is where the officers  
8 observed them to be and their evaluation at that time of  
9 whether they were immediately incriminating for purposes of  
10 seizure.

11 So I'd also like to note one more specific fact which  
12 is the four devices that the defendant challenges is having  
13 been in the safes rather than in plain view. We expect that  
14 the agent testimony will establish that the seizing officer who  
15 created an evidence log in the morning when she left the  
16 defendant's premises included the four devices prior to the  
17 safes even being opened.

18 So the protective sweep was conducted by a number of  
19 law enforcement agents. They gathered what devices were  
20 available to them and then they sought a warrant for the safes  
21 that were in plain view. Those safes, the warrant wasn't  
22 obtained and the safes weren't opened until the afternoon. But  
23 the individual in the morning who created the evidence log that  
24 includes four of the seized devices was no longer present or  
25 gathering evidence. So we expect her testimony alone will

J6DAAKIDC

Conference

1 overwhelming establish that those four devices could not have  
2 been the safes as the defendant alleges.

3 So with respect to the specific facts presented by  
4 this case, I think the victim testimony is simply not necessary  
5 because of the particular fact pattern that the defendant  
6 alleges and the particular facts that he is challenging.

7 THE COURT: Let's continue with the hypothetical that  
8 I indicated earlier. Let's suppose that one of the victims  
9 says that he or she resided in that apartment on a regular  
10 basis for the past year and she or he or she had seen the  
11 defendant place stuff in a safe that is located in the living  
12 room would there not be questions of at the very minimum  
13 credibility if the agent says that he or she saw the safe in  
14 the bedroom?

15 MS. BRACEWELL: So understanding that hypothetical,  
16 true, yes, there might be if there was a dispute as to where  
17 the safes were located, the way that the defendant's affidavit  
18 reads is that he doesn't dispute that the safes were located  
19 one in the bedroom and one in his closet. He instead disputed  
20 that they were in plain view. He alleges with respect to the  
21 safe in the closet that it was obscured by a box of baby wipes  
22 and he alleges that the safe in the corner was sort of situated  
23 between the dresser and radiator such that it could not have  
24 been observed by the law enforcement officer.

25 So in this instance the factual question is not where

J6DAAKIDC

Conference

1 the safes were when the officers entered the apartment. It's  
2 instead, whether these particular officers in fact observed the  
3 safes in the locations that they were. And I think as the  
4 officers will explain in testifying, their practice in  
5 conducting a protective sweep is to assess and evaluate the  
6 four corners of a room to assure themselves that they've  
7 removed any threats. And in so doing they identify both of  
8 these particular safes. They photographed them in the  
9 locations that they were found before obtaining the search  
10 warrant that led to their subsequent search. So I think  
11 accepting your Honor's hypothetical that that might necessitate  
12 witness testimony, I think this situation simply doesn't.

13 THE COURT: Well, if you have individuals in the  
14 apartment at the time that the arrest took place and at the  
15 time that the officer went into the bedroom and found by their  
16 testimony the safes in the bedroom, I think it is not  
17 irrelevant to have another individual or individuals who also  
18 were in the apartment at the time that the officers came in to  
19 indicate what they saw or didn't see as to the location of  
20 these safes.

21 If it turns out that these individuals were to testify  
22 that they had regular contact with the defendant in that  
23 apartment and had reason to know whether or not there were  
24 safes in that bedroom which you would want to know how  
25 frequently they were in that room to be able to verify whether

J6DAAKIDC

Conference

1 or not they had reason to have knowledge of the location of  
2 safes, in this case that testimony could go not only to  
3 establishing the location of the safes but also potentially,  
4 the matters of credibility of the agents.

5 MS. BRACEWELL: I think we would note that the  
6 application for the search warrant for the safes indeed, cites  
7 to the victims' knowledge and they knew that the defendant kept  
8 money in the safe and so they were aware of the fact of the  
9 safes. But again, I would just focus on the actual disputed  
10 facts in this hearing. While they might have relevant  
11 testimony about the safes at large, I don't see that their  
12 testimony would be relevant to the particular facts in dispute  
13 here.

14 THE COURT: The dispute here is whether or not the  
15 safes were in plain view. And if these individuals say that  
16 the safes were in the closet it, in fact, would support the  
17 government's theory.

18 MS. BRACEWELL: So again, I might just not be tracking  
19 correctly but I don't think that the fact that one safe was in  
20 the closet and one safe was in the bedroom is in dispute. I  
21 think the location of the safes is undisputed between law  
22 enforcement and the defense. So I think the only question is  
23 sort of visibility to law enforcement in conducting the  
24 protective sweep at the time of the morning of the arrest. So  
25 again, were there a dispute about the location that that's

J6DAAKIDC

Conference

1 simply not present here. Where they were found is documented  
2 in photographs taken that morning. Those, we don't understand  
3 to be disputed. There's no allegation that they, the safes  
4 were moved but instead, objects around them might have been  
5 moved by the officers or something to that effect.

6 MR. MARGULIS-OHNUMA: There is an allegation the safes  
7 were moved and the witnesses that I'm proposing would know  
8 where they were before the searches. So that's part of proving  
9 that up.

10 THE COURT: I think there is sufficient uncertainty on  
11 this issue that would support a determination that these  
12 witnesses should be allowed to testify and to indicate what  
13 their understanding was of the location of these safes so as to  
14 establish whether or not the safes were in fact where the  
15 officers said they were or potentially whether they were moved.  
16 If these witnesses were in the room at the time or had  
17 knowledge of the room over the course of time, they could  
18 testify that the safes were not where the photographs indicate  
19 but potentially somewhere else.

20 So I think that for the purposes of trying to get  
21 clarification and approximate what is the truth here the  
22 testimony of those witnesses may be important. All right?

23 MR. MARGULIS-OHNUMA: Thank you, judge. I appreciate  
24 the ruling I guess mechanically, I guess we'll work out  
25 compelling their presence at the hearing. I guess we're up to



J6DAAKIDC

Conference

1 three or four hours at the hearing.

2 THE COURT: All right. Now, let me turn to the other  
3 two matters that I made reference to before, which is the  
4 evidence obtained pursuant to the warrants of March 7 to search  
5 the electronic devices that were seized and the suppression of  
6 evidence obtained from the warrant of December 4 and the pen  
7 registered data number ending in 7216.

8 I'm not persuaded that the defendant has made a  
9 sufficient case as to those matters to support a determination  
10 that the warrants were not properly issued and that the  
11 evidence should be suppressed. Again, I will issue a more  
12 detailed ruling on those questions.

13 Anything else from the government?

14 MS. BRACEWELL: Yes, your Honor. The S1 indictment  
15 was returned I believe on June 5 and the defendant has not yet  
16 been arraigned on the S1 indictment. If we could do so?

17 THE COURT: All right. Thank you.

18 Mr. Margulis, anything else on your end?

19 MR. MARGULIS-OHNUMA: We do need to set a final date  
20 for the hearing.

21 THE COURT: Yes. We're looking at the calendar for an  
22 early date on July 1. June 21, Friday, between noon and four  
23 p.m. we have a window.

24 Ms. Bracewell, would that be suitable for the  
25 government?

J6DAAKIDC

Conference

1 MS. BRACEWELL: That's fine for the government.

2 MR. MARGULIS-OHNUMA: Perfect, your Honor.

3 Thank you.

4 THE COURT: Let's proceed with an arraignment of the  
5 defendant on the superseding indictment.

6 Mr. Kidd, please rise.

7 Let me remind you of certain rights that you have with  
8 regard to this superseding indictment. You have the right to  
9 remain silent. You need not make any statement. If you have  
10 already made statements to the authorities you need not make  
11 any additional statements. Any statements that you do make may  
12 be used against you. You are represented here by counsel today  
13 and you have the light to be represented by an attorney at all  
14 future proceedings in this matter.

15 Mr. Margulis, have you seen a copy of the superseding  
16 indictment?

17 MR. MARGULIS-OHNUMA: I have, your Honor. I've  
18 reviewed it with my client and he waives its public leading.

19 THE COURT: How does the defendant plead on the  
20 superseding indictment?

21 MR. MARGULIS-OHNUMA: Not guilty.

22 THE COURT: All right. Thank you.

23 Is there anything else from the government now?

24 MS. BRACEWELL: Nothing further from the government.

25 THE COURT: Anything else from the defendant,

J6DAAKIDC

Conference

1 Mr. Margulis?

2 MR. MARGULIS-OHNUMA: No. Thank you very much, you  
3 were.

4 MS. BRACEWELL: Your Honor, since we have a  
5 superseding indictment, I would move to exclude time on the  
6 superseding indictment until July 8, the date of trial, just so  
7 that the defense can continue to prepare for trial, we can  
8 continue with the briefing of the motions underway and for all  
9 the remaining trial preparation.

10 MR. MARGULIS-OHNUMA: We object to any exclusion of  
11 time, your Honor.

12 THE COURT: The government has moved to exclude or  
13 adjourn time from speedy trial calculations. The defendant's  
14 objected. I am granting the government's motion. I find the  
15 reasons conveyed to the Court warrant an exclusion of time as  
16 it is intended to ensure the effectiveness of counsel and to  
17 prevent any miscarriage of justice. The Court is satisfied  
18 that the ends of justice served by the granting of this  
19 continuance are in the best interests of the public and the  
20 defendant in a speedy trial. This order of exclusion of time  
21 is pursuant to the provisions of the Speedy Trial Act, Title 18  
22 U.S.C. Section 3161(h)(7)(b)(2) and (4).

23 Thank you. Have a good day and a good week.

24 (Adjourned)